IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6006 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

A'BAD VIDHYUT KELAVANI SAMAJ

Versus

ISHWERBHAI M PATEL

Appearance:

MR ARUN H MEHTA for Petitioners

MR RK MISHRA for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 23/03/2000

ORAL JUDGEMENT

This petition is filed for quashing and setting aside interim order passed by the Gujarat Primary Education Tribunal on October 13, 1987 in Application No. 90 of 1997, Annexure `M' to the petition.

The case of the petitioner was that it was an institution which was running a primary school. The management initiated proceedings against the respondent teacher. For the said purpose, one man committee was appointed which inquired into allegations against the respondent. The committee found the teacher guilty.

The contention of the teacher before the Tribunal was that constitution of the committee was not in accordance with provisions of Bombay Primary Education Act, 1947 read with Schedule F of the Bombay Primary Education Rules, 1949. Clause 18 of Schedule F provides procedure for imposing penalties specified in items (6) to (19) of Rule 16. Sub-clause (6) of Clause 18 is material for our purpose which reads as under :

"(6) On receipt of the written statement of defence or if any such statement is not received within the time specified, the management may itself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to it his report and, if advised his recommendation along with all the inquiry papers:

Provided that in the case of a teacher an Enquiry Committee shall be constituted consisting of the following persons, namely.

(i) one representative of the management;
(ii) the Head Master of the school; and
(iii) a representative of the concerned teacher."

Reading the proviso to sub clause (6) of Clause 18, it is clear that in case of a teacher, the Enquiry Committee must consist of atleast three persons viz.

(i) one representative of the management;
(ii) the Head Master of the school; and
(iii) a representative of the concerned teacher.

It is not in dispute that the Enquiry Committee constituted in the present case was of one member only. In these circumstances,the Tribunal observed that the inquiry held against the respondent could not be said to

be legal and valid.

Apart from the fact that there is statutory provision and Schedule F is held to be intra vires and constitutional, the point is also covered by a decision of the Division Bench of this Court in Benson Knock Semual vs. State, 1995 (1) GLR 691.

In view of the above legal position, it cannot be said that the Tribunal has committed any error of law and/or of jurisdiction in passing the impugned order in favour of the respondent. There is no substance in the petition and it deserves to be dismissed. Accordingly, the petition is dismissed. Rule is discharged. Interim relief vacated. No order as to costs.

--
parekh